

### **REMARKS/ARGUMENTS**

Claims 1-56 and 59-72 are pending in the application. In this Office action, claims 22-32 and 60-62 stand rejected under 35 U.S.C. §103(a), notwithstanding these claims were previously allowed. Claims 63-68 stand objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1-21, 33-56, 59, and 69-72 stand allowed.

In this paper, claims 22, 60, and 62-68 have been cancelled without prejudice. Claims 23, 30, 31, and 61 have been amended to change their dependency. Claims 73-79 have been added. Claim 73 is essentially claim 22 with a further limitation. Claims 74-79 are essentially claims 63-68, respectively, rewritten in independent form to include the limitations of claims 60 and 62.

Reconsideration and reexamination of the application is respectfully requested in view of the following remarks.

#### **Rejection Under 35 U.S.C. §103(a)**

Claims 22-32 and 60-62 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,790,256 to Brown et al. in view of U.S. Patent No. 5,025,476 to Gould et al. The rejection is traversed.

Independent claims 22 and 60 have been cancelled without prejudice. Thus, the rejection of claims 22-32 and 60-62 is moot. Applicant will briefly address new claim 73 in light of the rejection.

Claim 73 calls for a method of making a shoe correction for the alignment of a person's foot, comprising the steps of inclining the person's lower leg a preselected angle in dorsiflexion, measuring the lateral angular alignment of the person's foot with respect to the lower portion of the leg while in dorsiflexion, and selecting from a database appropriate corrective components for incorporation into a shoe to correct the alignment of the person's foot.

Brown '256 discloses a foot analyzer comprising a pair of four-sided foot wells having 1) a pair of pressure pads comprising pressure sensitive, variable resistors on which a person stands, 2) linear arrays of infrared transmitters along the lower edges of the foot well walls, and 3) arrays of infrared transmitters in the side walls of the foot wells. A person stands on the pressure pads with one foot in each well. The pressure pads and infrared transmitters are activated and the data from these devices is recorded and processed in a computer controller. The infrared transmitters along the lower edges of the foot well walls are used to determine width and length of the person's feet. *See, e.g. col. 6, ln. 23-46.* The infrared transmitters in the side walls are used to determine the height of the person's feet. *See, e.g. col. 6, ln. 49-58.* The pressure pads are used to develop a pressure profile for each foot, which is displayed on a monitor screen.

Specific data developed from the pressure pads and infrared transmitters can include distributed weight values throughout each foot, overall weight, foot length, foot width, foot heights at various locations along the foot, and foot volume. Bunions and toe deformities that would interfere with shoe comfort can also be detected. Specific data can then be compared with stored information related to shoe size and available shoe volume, and properties of various orthotic materials such as cushioning, force absorption, deflection, compression, rigidity, and the like. *See, col. 18, ln. 30-44. See, also, col. 13, ln. 1-2.*

Nowhere does Brown '256 disclose measuring the lateral angular alignment of a person's foot, or inclining the person's foot a preselected angle in dorsiflexion, as a step in the process of making a shoe correction. Indeed, measuring the lateral angular alignment of a person's foot must involve measurements taken from either the front or rear of the foot, which must involve determining the lateral inclination of the person's lower leg. The only instrumentation in the front or rear of the Brown '256 foot wells is a linear array of infrared transmitters along the lower edges of the front and rear walls. This linear array of transmitters is incapable of determining the lateral inclination of the person's lower leg. Thus, the Brown '256 apparatus is incapable of measuring the lateral angular alignment of a person's foot.

Gould '476 discloses an apparatus for determining the "topography" of the soles of a person's foot through a process known as moiré fringe analysis. The analysis enables particular reference points, called a "signature" for the foot, to be established for the person's foot, which can be compared to a database of signatures to select a single signature corresponding to the person's foot. This database signature can then be used to select a shoe size and width. The signature can also be used to select the length of a corrective insert for a shoe and its width at the heel and in the area beneath the ball of the foot, or to enhance the accuracy of diagnosis of foot problems. Nowhere does Gould '476 disclose measuring the lateral angular alignment of a person's foot, or inclining the person's foot a preselected angle in dorsiflexion, as a step in the process of making a shoe correction.

Because neither Brown '256 nor Gould '476 discloses an apparatus or a methodology for measuring the lateral angular alignment of a person's foot, or inclining the person's foot a preselected angle in dorsiflexion, as a step in the process of making a shoe correction, the combination of Brown '256 and Gould '476 fails to describe the method of Applicant's claim 73, which requires inclining the person's lower leg a preselected angle in dorsiflexion and measuring the lateral angular alignment of the person's foot with respect to the lower portion of the leg.

For these reasons, claim 73 is patentable over the asserted combination of Brown '256 and Gould '476. Applicant requests the allowance of claim 73.

Since claims 23-32 depend directly or indirectly from claim 73, claims 23-32 are similarly not rendered unpatentable by the asserted combination of Brown '256 and Gould '476. Applicant requests the withdrawal of the rejection of claims 23-32, and the allowance of claims 23-32.

The Examiner has indicated that claims 63-68 would be allowable if rewritten in independent form to include the limitations of the base claim and any intervening claims. Claims 74-79 are essentially claims 63-68, respectively, rewritten in independent form to include the limitations of claims 60 and 62, while avoiding redundancies. Thus, claims 74-79 are allowable. Claim 61 has been amended to depend, alternatively, from claims 74, 75, 76, 77, 78, and 79.

Thus, claim 61 is allowable.

### CONCLUSION

For the reasons discussed above, all of the claims are in condition for allowance. Early notification of allowability is requested.

Applicant requests an Advisory Action be issued in this case. If there are any remaining issues which the Examiner believes may be resolved in an interview, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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